

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY HENCE,

Plaintiff,

Case No. 1:08-cv-1231

v

HON. JANET T. NEFF

MARY BERGHUIS, et al.,

Defendants.

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed a motion for summary judgment on May 17, 2010 (Dkt 66). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that Plaintiff's motion be denied (R & R, Dkt 72). The matter is presently before the Court on Plaintiff's Objections to the Report and Recommendation (Pl. Obj., Dkt 75). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff provides no substantive objection to the Magistrate Judge's findings, but instead makes a general assertion that he has produced facts to support his claim, that Defendants have not set out facts that create a genuine issue for trial, and that he is, therefore, entitled to summary judgment (Dkt 75 at 1-2). Plaintiff references his Motion for Summary Judgment and his Objection

to a separate Report and Recommendation regarding Defendants' Motion for Summary Judgment (Dkt 75 at 1-2). Plaintiff then summarizes his argument as to his retaliation claim (Dkt 75 at 2). Plaintiff identifies no error in the Magistrate Judge's analysis. As noted in a separate Opinion and Order issued on this date, the Court approves and adopts the Magistrate Judge's Report and Recommendation as to Defendants' Motion for Summary Judgment (Dkt 71), finding that Defendants are entitled to summary judgment on Plaintiff's retaliation claims and that a genuine issue of material fact exists as to Plaintiff's Eighth Amendment claim arising from his exposure to paint fumes.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 210-11 (2007)).

Therefore:

IT IS HEREBY ORDERED that Plaintiff's Objections (Dkt 75) are DENIED and the Report and Recommendation (Dkt 72) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt 66) is DENIED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a) that an appeal of this Opinion and Order would not be taken in good faith.

Dated: March 15, 2011

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge